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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1947**

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# No. 290

JAMES M. HURD AND MARY I. HURD,
*Petitioners,*

*vs.*

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI, MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MARGARET GIANCOLA,
*Respondents*

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# No. 291

RAPHAEL G. URCIOLO, ROBERT H. ROWE, ISABELLE J. ROWE, HERBERT B. SAVAGE, GEORGIA N. SAVAGE, AND PAULINE B. STEWART,
*Petitioners,*

*vs.*

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI, MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MARGARET GIANCOLA,
*Respondents*

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## CONSOLIDATED PETITIONS AND SUPPORTING BRIEF FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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RAPHAEL G. URCIOLO, *Pro se,*

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## CONSOLIDATED PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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The petitioners pray that writs of certiorari issue to review the judgments of the United States Court of Appeals for the District of Columbia entered in the above entitled causes on May 26, 1947, affirming the judgments of the United States District Court for the District of Columbia.

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## Summary Statement of the Matter Involved

The trial court found that petitioner Urciolo (who appears *pro se*) is a white man (R. 380) and that the other petitioners are Negroes (R. 380). Urciolo had conveyed three parcels [1] of improved residential land in the 100 block of Bryant Street, Northwest, in the District of Columbia to the petitioners Rowe, Savage, and Stewart, respectively (R. 382). Urciolo now owns three other parcels [2] in the same block (R. 382). Petitioners Hurd are the grantees from one Ryan and his wife [3] of another parcel [4] in the same block (R. 381). The grantees now occupy as their homes the property conveyed to them (R. 381, 382).

In the 100 block of Bryant Street, Northwest, there are 31 lots on the south side of the street improved by 31 dwellings; the north side of the street is the southern boundary of a public park (R. 381). Twenty lots on the south side of the street were sold about 1906 subject to the following covenant in the respective deeds (R. 380):

> "Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person under a penalty of Two Thousand Dollars ($2,000), which shall be a lien against said property."

The 7 lots here involved are part of these 20 lots. The remaining 11 of the 31 lots on the south side of the street, as well as almost all of the contiguous areas to the south and west, have been owned and occupied by Negroes for

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[1] Premises 118, 134 and 150 Bryant Street, Northwest.

[2] Premises 126, 144 and 152 Bryant Street, Northwest.

[3] Francis X. Ryan and his wife, the grantors of petitioners Hurd, were subjected to jurisdiction by publication, and never appeared or participated in the case, and are not parties to these petitions. Without any evidence whatever, the trial court found that the Ryans are white (R. 380, 407).

[4] Premises 116 Bryant Street, Northwest.

many years (R. 381). The residential property in the area has a 30% greater monetary sale value to Negro purchasers than to white purchasers (R. 261, 263).

This proceeding originated when the respondents, neighboring property owners, sought and obtained in the United States District Court for the District of Columbia judgments (1) declaring null and void the deeds to the grantee petitioners and revesting title to the respective premises in Urciolo and Ryan, (2) permanently enjoining Urciolo and Ryan, respectively, from renting, leasing, selling, transferring or conveying any of the above 7 lots to any Negro or colored person; (3) permanently enjoining the grantee petitioners from renting, leasing, selling, transferring or conveying their above respective premises to any one; and (4) ordering the Negro petitioners "to remove themselves and all of their personal belongings from the land and premises now occupied by them" (R. 384-5, 411-12).

The Court of Appeals (Justices Clark and Wilbur K. Miller) affirmed on the basis of its prior decisions, holding that "the appellants have presented no contention that is not answered by those decisions" (R. 418). Justice Edgerton dissented (R. 420) on five general [5] grounds, each independent of the other four, namely:

1. "The covenants are void as unreasonable restraints on alienation."

2. "They are void because contrary to public policy."

3. "Their enforcement by injunction is inequitable."

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[5] Justice Edgerton also dissented on two special grounds: (1) Enforcement of the covenant would defeat its original purposes since Negroes will pay much more than whites for the property and since the neighborhood is no longer white; and (2) the injunctions, against both transfer and occupancy, are broader than the covenant, since the covenant did not forbid use and occupancy. *Gospel Spreading Association, Inc.* v. *Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878 (R. 422).

4. "Their enforcement by injunction violates the due process clause of the Fifth Amendment."

5. "Their enforcement by injunction violates the Civil Rights Act." (Rev. Stats., Sec. 1978, 8 U. S. C., Sec. 42.)

Each ground considered by Justice Edgerton was briefed and argued by petitioners in the Court of Appeals.

## Jurisdiction

The judgments of the Court of Appeals were entered on May 26, 1947 (R. 433). The petition for rehearing filed by petitioners was denied on June 23, 1947 (R. 453). The jurisdiction of this Court is invoked under Section 240 of the Judicial Code (28 U. S. C. § 347(a)).

## Questions Presented

Whether the judicial enforcement of agreements restricting the sale of land by a willing seller and the acquisition and occupancy of land by a willing buyer, where the restriction is based solely on the race or creed of the buyer:

(a) violates the Fifth Amendment;

(b) is contrary to sec. 1978, Revised Statutes, 8 U. S. C., sec. 42;

(c) violates a treaty of the United States, namely, the Charter of the United Nations to which the United States has adhered;

(d) is contrary to the public policy of the United States;

(e) should be denied because the specific enforcement of such restriction would be of such discriminatory character and so greatly inequitable, especially so under present housing conditions, that a court of equity should not

lend its aid by requiring specific performance of the covenant; and

(f) should be denied because the covenants are void as unreasonable restraints on alienation.

**Provisions of Constitution, Treaties and Statute Involved**

The Fifth Amendment of the Constitution provides in part:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law * * *."

The Charter of the United Nations provides in part:

> Art. 55. "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: * * *
>
> (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."
>
> Art. 56. "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

The Civil Rights Act, R. S. § 1978, 8 U. S. C. § 42, provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

## Reasons for Granting the Writs

1. This Court has already granted writs of certiorari in two cases involving the validity of judicial enforcement of racial restrictive covenants,[6] and this Court should consider this case along with those cases. There are special reason for granting certiorari in this case. (*a*) The other two cases involve covenants against use and occupancy, whereas this case involves a covenant against alienation only.[7] (*b*) In enjoining use and occupancy by, and alienation to, the grantees, the courts below were not enforcing the covenant but were *judicially legislating*, without predication upon a previous private agreement, the very use and occupancy restriction forbidden in *Buchanan* v. *Warley*, 245 U. S. 60. (*c*) The other two cases arise from areas under State jurisdiction whereas this case arises from an area under the exclusive jurisdiction of the Federal Government. The very fact that this case arises from a Federal Court in the Nation's capital raises broader considerations of public policy than may be present in cases arising from State courts. Actual or fancied differences by way of claimed distinctions between the Fifth and Fourteenth Amendments, or as to the effects of the Civil Rights Act in State and Federal areas, or as to the questions presented, may therefore produce further unnecessary conflicts and litigation, if the writs herein sought are not granted. (*d*) In addition, one of the petitioners in this case is a white owner of land seeking to prevent the restriction of his right to sell

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[6] *McGhee* v. *Sipes*, No. 87, Oct. Term, 1947 (from Supreme Court of Michigan); and *Shelley* v. *Kraemer*, No. 72, Oct. Term, 1947 (from Supreme Court of Missouri).

[7] Some State courts, while upholding racial covenants restricting use and occupancy, invalidate racial covenants restricting sale or alienation, see *e. g.*, *Los Angeles Investment Co.* v. *Gary*, 181 Cal. 680, 186 Pac. 596; *Schulte* v. *Starks*, 238 Mich. 102, 213 N. W. 102; *Scholtes* v. *McColgan*, — Md. —, 41 A. (2d) 479; *White* v. *White*, 108 W. Va. 128, 150 S. E. 531.

his property on a free market (Cf. *Buchanan* v. *Warley*, 245 U. S. 60). (*e*) Finally, unless writs of certiorari are granted in this case, the judgments declaring the deeds of the grantees null and void may become *res judicata* and cause irreparable injury to the grantees, even though this Court may, in the two cases in which certiorari has already been granted, hold that racial restrictive covenants are not judicially enforceable.

2. Enforcement of the restrictive covenant by Federal court injunction violates the due process clause of the Fifth Amendment. In *Buchanan* v. *Warley*, 245 U. S. 60, this Court held that enforcement of a Louisville ordinance which forbade Negroes to move into predominantly white city blocks would violate the due process clause of the Fourteenth Amendment. In *Harmon* v. *Tyler*, 273 U. S. 668, this Court held void a New Orleans ordinance which forbade Negroes to establish residence in a white community and whites to establish residence in a Negro community "except on the written consent of a majority of the persons of the opposite race inhabiting such community."

Had the racial restriction in this case been enacted by a legislative body, its judicial enforcement would be unconstitutional under the doctrine of those cases. Judicial enforcement of a racial restriction is no less violative of constitutional rights merely because the restriction has its origin in private agreement rather than in legislative enactment. In either case direct government action is the effective enforcing agent. Nor is it material whether it is through the legislative or the judicial branch of the government that constitutional guarantees are infringed. The difference is particularly meaningless where, as here, the court involved is a Federal District Court, whose powers to grant equitable relief are exclusively derived from Acts of Congress, Judi-

cial Code, Sec. 24, 28 U. S. C. § 41(1); 11 D. C. Code (1940) §§ 305, 306.

3. Whether the issuance of the injunction in this case is consistent with the Civil Rights Act, 8 U. S. C. § 42, presents an important Federal question which has not been, but should be, determined by this Court. Enforcement of a restrictive covenant by Federal court injunction violates that Act, which provides that:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

4. Whether the enforcement of the covenant by Federal court injunction is compatible with Articles 55(c) and 56 of the Charter of the United Nations, 59 Stat. 1031, 1045-1046, presents an important Federal question which has not been, buf should be, determined by this Court. Enforcement of a racial covenant by Federal court injunction violates that treaty, which provides that:

> "the United Nations shall promote • • • universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race."

5. The covenant and its enforcement are void because contrary to the public policy of the United States. The public policy is expressed (a) by the Constitution, as construed in *Buchanan* v. *Warley*, 245 U. S. 60, and *Harmon* v. *Tyler*, 273 U. S. 668; (b) by the Civil Rights Act; (c) by the treaties and other international commitments of the United States; and (d) by the President of the United States. In addition, the severe effects of the covenant on the housing, health and safety of a substantial proportion of the people of the United States demonstrates that judi-

cial enforcement of the covenant would be against public policy, and should not be countenanced.

6. The enforcement of the covenant is so discriminatory and so inequitable that no court should lend its aid by specific enforcement.

7. The perpetual covenant in this suit is void as an unreasonable restraint on alienation.

8. This Court did not, in *Corrigan* v. *Buckley*, 271 U. S. 323 (1926), decide the questions which are here urged. Since the decisions of the courts below, as well as the decisions of numerous State courts since 1926 in cases involving racial restrictive covenants, were based on erroneous assumptions concerning the case of *Corrigan* v. *Buckley*, this Court should grant writs of certiorari in this case in order that matters of large public concern may be decided on the merits rather than on misapprehensions as to the views of this Court.

## Conclusion

It is respectfully submitted that the petitions for writs of certiorari should be granted.

RAPHAEL G. URCIOLO, *Pro se.*

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## BRIEF IN SUPPORT OF CONSOLIDATED PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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### Opinions Below

The opinion of the Court of Appeals (R. 417-432) is reported in — F. (2d) —. The District Court's Findings of Fact, Conclusions of Law and Judgment in *Hurd* v. *Hodge*

are on pages 379-385 of the Record, and in *Urciolo* v. *Hodge* on pages 406-413.

## Jurisdiction

The jurisdiction of this Court is invoked under section 240 of the Judicial Code. 28 U. S. C., Sec. 347(a).

The judgments sought to be reviewed were entered by the United States Court of Appeals for the District of Columbia on the 26th day of May, 1947 (R. 433). Motion for rehearing was duly filed and denied on the 23rd day of June, 1947 (R. 434, 453).

## Statement of the Case

The statement of the case and a statement of the salient facts from the record appear in the accompanying petitions for certiorari.

## Specification of Errors to Be Urged

The Court of Appeals for the District of Columbia erred:

(1) In failing to hold that enforcement of the covenant by Federal Court injunction violates the Fifth Amendment of the Constitution.

(2) In failing to hold that enforcement of the covenant by Federal Court injunction violates the Civil Rights Act.

(3) In failing to hold that enforcement of the covenant by Federal Court injunction violates the United Nations Charter.

(4) In failing to hold that the covenant and its enforcement are void because contrary to the public policy of the United States.

(5) In failing to hold that the hardship to grantee petitioners from enforcing the covenant would so outweigh the benefit to respondents that a court of equity would not enforce the covenant.

(6) In failing to hold that the covenant is void as an unreasonable restraint on alienation.

(7) In affirming the judgments of the District Court for the District of Columbia.

## Summary of Argument

The questions presented involve matters of large domestic and international importance. These questions have not been, but should be, settled by this Court.

This case presents questions of substance relating to the Constitution, Laws and Treaties of the United States, which have not been, but should be settled by this Court. Judicial enforcement of a restrictive covenant which, solely on the basis of race, (1) forbids a person from acquiring, occupying and selling land and (2) forbids an owner of land from selling it to any member of the restricted group, is in violation of the due process clause of the Fifth Amendment. This Court has held that the legislative imposition of such restriction is unconstitutional under the Fourteenth Amendment. The guaranty of due process in the Fifth Amendment is similar to that in the Fourteenth Amendment and applies to the District of Columbia. The prohibition of the due process clause applies to judicial action. Both the legislature and the judiciary are arms of the government. A result forbidden by the Constitution to the legislature cannot be achieved through judicial enforcement of private agreements as against willing sellers and willing buyers. Judicial enforcement of restrictive covenants also violates Section 1978 of the Revised Statutes and a treaty of the United States, namely, the United Nations Charter.

Racial restrictive covenants and their enforcement by the courts are so plainly contrary to the public policy of the United States that the judgment of the court below should be reversed by this Court.

Because of the discriminatory character and inequity of agreements restricting the sale, purchase and occupancy of land solely on the basis of race, no court of equity should lend its aid to the specific enforcement of such agreements.

Racial restrictive covenants are void as unreasonable restraints on alienation.

This Court did not, in *Corrigan* v. *Buckley*, 271 U. S. 323 (1926), decide the questions, which are here urged. Since the decisions of the courts below, as well as the decisions of numerous State courts since 1926 in cases involving racial restrictive covenants, were based on erroneous assumptions concerning the case of *Corrigan* v. *Buckley*, this Court should grant writs of certiorari in this case in order that matters of large public concern may be decided on the merits rather than on misapprehensions as to the views of this Court.

## ARGUMENT

### I

**This case presents questions of general importance which have not been, but should be, settled by this Court, namely, whether courts may enforce private agreements which, solely on the basis of race or creed, attempt to prevent a substantial proportion of the people in the United States from purchasing and occupying land for residential purposes.**

Only two cases involving racial restrictive covenants have heretofore been decided by this Court.[1] One was dismissed

[1] This Court has denied petitions for certiorari in several prior cases involving racial restrictive covenants. But as this Court has said (Justice Holmes): "The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times." *United States* v. *Carver*, 260 U. S. 482, 490; *Atlantic Coast Line R. R. Co.* v. *Powe*, 283 U. S. 401, 403, 404.

for want of jurisdiction;[2] and the other was decided solely on the question whether a judgment in a prior collusive suit was *res judicata* as to persons not parties to the prior suit.[3]

### A. Domestic Importance of Questions

Limitations upon land use for living space by members of racial or religious minorities constitute at present one of the gravest dangers to democracy in America. During the past two decades, racial restrictive covenants have been extensively and uniformly imposed in most of the major cities of the nation on almost all newly constructed dwellings, new residential subdivions, and existing residential properties contiguous to areas occupied by Negroes. This private, and wholesale, zoning has hemmed one of the restricted groups, Negroes, into virtual Ghettos.[4] There can be no relief from this ever-increasing constriction so long as these covenants place artificial yet impassable boundaries—iron rings in depth—around the existing areas of Negro occupancy, and bar Negroes of all income groups from occupancy in most suburban areas where new construction has been concentrated. The lack of sufficient space from decent living and normal expansion which has resulted largely from those restrictions on the housing market and the increased urbanization of the Negro population, have caused enormous inflation of rentals and housing costs for Negroes,[5] excessive crowding in dwellings and congestion

[2] *Corrigan* v. *Buckley*, 271 U. S. 323 (1926).

[3] *Hansberry* v. *Lee*, 311 U. S. 32.

[4] See Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 Univ. Chi. L. Rev. 198, 204 (Feb. 1945); Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," 624 (1944); Robert E. Gushman, "The Laws of the Land," 36 Survey Graphic 14, 17 (1947).

[5] Corienne K. Robinson, "Relationship Between Condition of Dwellings and Rentals, By Race," 22 Journal of Land & Public Utility Economics 296 (Aug. 1946).

of neighborhoods,[6] and deterioration into slums, with the universally known baneful effects upon the economic, social and moral life, not only of the Negroes, but also of the entire community.[7] No legislature may constitutionally enact a statute imposing racial restrictions on land use.[8] Yet the wholesale and extensive imposition of these racial restrictive covenants has a more drastic effect than any legislative zoning statute. Through government control, it would at least have been possible to have some sort of planned expansion of areas predominantly occupied by Negroes. But the creation by individuals of racial restrictive covenants ordinarily takes no broader view than that dictated by racial prejudice. A statute may be, and frequently is, repealed or modified to accommodate changed conditions. Most racial

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[6] Embree, "Brown Americans," 34 (1943): "In a single block in Harlem there are 3,871 people. Comparable concentration for the entire population would result in all of the people of the United States living in one half of New York City." The Chicago Sun (Nov. 29, 1944, p. 7) reported a statement by Ferd Kramer, President of Chicago's Metropolitan Housing Council, that in Chicago "about 300,000 Negroes now live in accommodations which would normally house only one-third that number."

In Baltimore, Maryland, Negroes comprise 20% of the population but are constricted into 2% of the residential area. Report of Sub-Committee on Housing, Report of the Governor's Commission on Problems Affecting the Negro Population (Balto., 1943); see also Racial Problems in Housing Bulletin No. 2, National Urban League (New York, 1944).

[7] As long ago as 1932, when the situation was much less acute, the Report on Negro Housing of the President's Conference on Home Building and Home Ownership pointed out that enforced residential segregation "has kept the Negro-occupied sections of cities throughout the country, fatally unwholesome places, a menace to the health, morals and general decency of cities, and 'plague spots for race exploitation, friction and riots.'" (Pp. 45, 46, 143-198.) See also Woofter, "Negro Problem in Cities," 95 (1928); Report of Pennsylvania State Temporary Commission on the Conditions of the Urban Colored Population, 139-142 (1943); Robert C. Weaver, "Housing in a Democracy," Annals of the American Academy of Political and Social Science, 95-96 (Mar. 1946); Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," 626 (1944).

[8] *Buchanaan* v. *Warely*, 245 U. S. 60; *Harmon* v. *Tyler*, 273 U. S. 668; *City of Richmond* v. *Deans*, 281 U. S. 704.

restrictive covenants, however, including the covenant here involved, are *perpetual* restrictions. The increasing use of the racial restrictive covenant is drawing the iron ring tighter and tighter.

This situation is mirrored in the District of Columbia. The Negro population has doubled since 1930.[9] The area open to Negro residence appears, however, actually to have decreased. The shortage of housing in the District has become particularly acute for Negroes (R. 334, 339, 364), and especially for Negro veterans of World War II.[10] In enacting the District of Columbia Emergency Rent Act of 1941 (55 Stat. 788), Congress expressly mentioned "the congested situation with regard to housing accommodations existing at the seat of government." The Housing and Rent Act of 1947[11] states that "Congress recognizes that an emergency exists." This Court has declared that "Housing is a necessary of life," and held that residential use of land is "clothed . . . with a public interest." *Block* v. *Hirsh*, 256 U. S. 135, 157, 158. The judicial enforcement of these covenants therefore presents questions of general importance to the entire Nation, questions which this Court should now consider and settle.

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[9] Negroes in the District of Columbia: 1930 U. S. Census—132,068; 1940 U. S. Census—187,266; 1947 estimate—about 260,000.

[10] A recent survey by the Census Bureau indicates that the gross vacancy rate for privately financed dwelling units in the Washington, D. C. metropolitan area is 1.0% in white neighborhoods and 0.4% in Negro neighborhoods, and that "only three-fourths of the private vacancies in the area were habitable; of these only one-sixth were being offered for rent or sale. . . . One-fourth of the married white World War II veterans and seven-tenths of the married Negro veterans in the Washington Area were doubling up with relatives or friends or were living in rented rooms, trailers or tourist cabins." Bureau of the Census, "Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Washington, D. C., Metropolitan District," (Population HVet—No. 84, Feb. 4, 1947).

[11] Act of June 30, 1947, sec. 201(b)), Public Law 129, 80th Cong.

### B. International Importance

In many countries the color of a man's skin is little more important than the color of his hair, and in many others the favored color is not white. Racial segregation and discrimination in the United States are widely advertised throughout the world and embarrass the conduct of foreign affairs of the United States.[12] The reecnt adherence of the United States to the Charter of the United Nations, which provides that "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race" and that "All Members pledge themselves to take joint and separate action" for that purpose, accentuates the importance of having the questions in this case decided by this Court.

## II

**This case presents questions of substance relating to the Constitution, laws and treaties of the United States, which have not been, but should be, settled by this Court.**

**A. Judicial enforcement of a restrictive covenant which, solely on the basis of race, (1) forbids a person from acquiring, occupying and selling land, and (2) forbids an owner of land from selling it to any member of the restricted group, is in violation of the due process clause of the Fifth Amendment.**

This case involves two categories of petitioners, each of which asserts distinct types of property rights. (1) The

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[12] Robert W. Kenny, "The Inter American Bar and Racial Equality," 4 Lawyers Guild Rev., No. 4, pp. 7, 8 (July, 1944). Visiting personages and officials of foreign nations have noted, and often suffered from, racial restrictions which prevent their occupying residences in the District of Columbia and in other major cities. With the increasing number of such visitors, these restrictions assume even greater importance in the foreign relations of the United States. See *Chy Lung* v. *Freeman*, 92 U. S. 275, 279; ~~cf. *United States* v. *Freeman*, 92 U. S. 275, 279~~; cf. *United States* v. *California*, — U. S. — (June 23, 1947, No. 12); *In re Drummond Wren* (1945), 4 D. L. R. 674 (Ontario High Court).

grantee petitioners contend that judicial enforcement of the restrictive covenant violates the due process clause because, solely on the basis of their race, they are prevented by Governmental action from purchasing and occupying land for residential purposes. (2) Petitioner Urciolo, the landowner whom the trial court found to be white, contends that judicial enforcement of the restrictive covenant violates the due process clause because, solely on the basis of the race of prospective buyers, he is prevented by Governmental action from selling his property to a substantial proportion of the potential buyers of residential land.[13]

This Court has protected the rights of both categories mentioned above. In three different cases, this Court has held that legislative restrictions upon the alienation, acquisition and occupancy of land, based solely on race, is unconstitutional under the Fourteenth Amendment as a deprivation of property without due process of law.

*Buchanan* v. *Warley*, 245 U. S. 60 (Kentucky);[14]

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[13] The restrictive covenant is a two-edged sword. Owners of covenanted property often find, as time elapses and the neighborhood changes, that they are unable to dispose of their property to the prohibited groups, although their neighbors had already made such a disposition. See Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 Univ. Chi. L. Rev. 198, 204 (1945).

[14] In *Buchanan* v. *Warley*, the City of Louisville, Kentucky, forbade colored persons from occupying houses in blocks where the greater number of houses were occupied by white persons, and contained the same prohibitions as to white persons in blocks where the greater number of houses were occupied by colored persons. Buchanan, a white person, brought an action against Warley, a Negro, for the specific performance of a contract for the sale of Buchanan's lot to Warley. Warley defended upon a provision in his contract excusing him from performance in the event that he should not have under the laws of the State and City, the right to occupy the property, and contended that the ordinance prevented his occupancy. This Court held the ordinance unconstitutional.

*Harmon* v. *Tyler*, 273 U. S. 668 (Louisiana);[15]
*City of Richmond* v. *Deans*, 281 U. S. 704 (Virginia).[16]

These rulings have been uniformly followed to invalidate similar statutes in other States restricting sale and occupancy of residential property solely on the basis of race;[17] and are applicable to the District of Columbia, since the Fifth Amendment also contains the guarantee of due process which is present in the Fourteenth Amendment.[18]

The petitioners here have been deprived of their property without due process by the Government, acting in this instance through its judicial arm. The decree of the District Court, affirmed by the Court of Appeals, has adjudged null and void the deeds to the grantees and has ordered them to vacate the land and premises and not to convey

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[15] In Harmon v. Tyler, this Court held unconstitutional an ordinance of the City of New Orleans, Louisiana, which prohibited Negroes from establishing residence in a white community and whites from establishing residence in a Negro community, "except on the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the city." *Reversing: Tyler* v. *Harmon*, 158 La. 439, 104 So. 200; 160 La. 943, 107 So. 704 (suit to enjoin owner of cottage in white community from leasing to Negro tenants without obtaining consent of majority of white persons in the community).

[16] *In City of Richmond* v. *Deans*, this Court held unconstitutional an ordinance of the City of Richmond, Virginia, which attempted to achieve the same result by prohibiting any person from residing in a block where the majority of residences were occupied by those with whom such person was forbidden to intermarry under State law. It was held that the ordinance was based on race alone and was therefore unconstitutional. *Ibid.*, 37 F. (2d) 712 (C. C. A. 4th, 1930) (suit to enjoin City from enforcing ordinance.)

[17] Virginia: *Irvine* v. *City of Clifton Forge*, 124 Va. 781, 97 S. E. 310;
Georgia: *Glover* v. *City of Atlanta*, 148 Ga. 285, 96 S. E. 562; *Bowen* v. *City of Atlanta*, 159 Ga. 145, 125 S. E. 199;
Maryland: *Jackson* v. *State*, 132 Md. 311, 103 Atl. 910;
North Carolina: *Clinard* v. *City of Winston-Salem*, 217 N. Car. 119, 6 S. E. (2d) 867;
Oklahoma: *Allen* v. *Oklahoma City*, 175 Okla. 421, 52 P. (2d) 1054.

[18] *Heiner* v. *Donnan*, 285 U. S. 312, 326; *Twining* v. *New Jersey*, 211 U. S. 78, 101; *Farrington* v. *Tokushige*, 273 U. S. 284, 299; *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324, 329.

them to anyone, and has permanently enjoined Urciolo from renting, selling, leasing, transferring or conveying his lots to any Negro or colored person. It is not the private respondent, but the sovereignty, speaking through the Court, that has issued mandates (a) to the grantee petitioners enjoining them from occupying, using or selling their property, and (b) to petitioner Urciolo, whom the trial court found to be white, enjoining him from disposing of his property to a large number of people who constitute a substantial proportion of the potential buyers of residential land in the United States. Failure to obey would result in prompt enforcement of the decree through contempt proceedings, fines and incarceration behind bars, in jails maintained and operated by the Government.

If, because of the existence of a racial restrictive covenant, a Negro is privately persuaded or prevented from purchasing or occupying property, or a landowner is privately persuaded or prevented from selling to a Negro, or if the parties to the restrictive agreement each refuse to sell to a Negro, it is the action of the parties which effectively keeps the Negro out and which limits the market of the landowner. The same is true as to other private sanctions which they may be able to apply without resort to governmental forces. But when private sanctions are ineffective to compel obedience to the covenant, and it is necessary to resort to the courts for its enforcement, individual action ceases and governmental action begins.

This Court has held that the prohibition of the due process clause against forbidden governmental action, admittedly applicable to actions by legislatures, is also applicable to actions by courts in their decisions on questions of common law, substantive as well as procedural.

> "They [the prohibitions of the 14th Amendment] have reference to actions of the political body denomi-

nated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it." *Ex parte Virginia*, 100 U. S. 339, 346-7.

"But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment." *Chicago, B. & Q. R. Co.* v. *Chicago*, 166 U. S. 226, 234, 235.[19]

Both the legislature and the court act as arms of Government, with the authority of the sovereign. Racial restrictions which the Government may not impose through its

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[19] In numerous other cases this Court has held that such rights as are protected by the Fourteenth Amendment against impairment through State legislative action are also protected against impairment through State judicial action. *Virginia* v. *Rives*, 100 U. S. 313, 318; *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 35-6; *Hansberry* v. *Lee*, 311 U. S. 32, 41; *American Federation of Labor* v. *Swing*, 312 U. S. 321; *Bakery Drivers Local* v. *Wohl*, 315 U. S. 769; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Bridges* v. *California*, 314 U. S. 252; *Twining* v. *New Jersey*, 211 U. S. 78, 90-1; *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673; *Powell* v. *Alabama*, 287 U. S. 45; *Moore* v. *Dempsey*, 261 U. S. 86; *Scott* v. *McNeal*, 154 U. S. 34.

legislature are equally forbidden to the Government acting through its courts.[20] The fact that the governmental action forbidden under *Buchanan* v. *Warley* was initiated by the legislature, whereas the action in these cases was initiated by an individual, is obviously immaterial. For in many of the above-cited cases, wherein this Court held court action violative of the due process clause, the action was initiated by individuals. As Justice Edgerton so aptly remarked in his dissenting opinion in the court below, "The expressed will of a former property-owner cannot authorize the court to deny a right which the expressed will of a legislature could not authorize it to deny." Analogous are the following holdings of this Court, in other contexts: *Marsh* v. *State of Alabama*, 326 U. S. 501, 505, held that since "all those owners together could not have set up a municipal government with sufficient power to pass an ordinance completely barring" the exercise of the constitutional right, the totality of private ownership of the town could not exercise power, enforceable in the courts, to abridge such constitutional rights. *Smith* v. *Allwright*, 321 U. S. 649, held that a State, which may not by legislation deprive Negroes of the right to vote, may not achieve the same end through the medium of private political parties. *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, 203, held that a private union acting as bargaining representative under the authority of federal law may not make discriminations among members of the craft which are not based on relevant differences, and that "discriminations based on race alone are obviously irrelevant and invidious."

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[20] D. O. McGovney, "Racial Residential Segregation by State Courts Enforcement of Restrictive Agreements, Covenants and Conditions in Deeds is Unconstitutional," 33 Calif. L. Rev. 5 (1945); Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 Univ. Chi. L. Rev. 198 (1945).

The difference between infringement of constitutional guarantees through the legislature and infringement through the judiciary is particularly meaningless where, as here, the court involved is a Federal District Court, since its powers to grant equitable relief are exclusively derived from acts of Congress. Judicial Code, Sec. 24, 28 U. S. C., Sec. 41(1); 11 D. C. Code (1940), Secs. 305, 306.

Judge Ross, the donor of the American Bar Association's Ross Essay Prize, clearly probed the heart of the question in the first reported case involving a racial restrictive covenant. *Gandolfo* v. *Hartman*, 49 Fed. 181, 182, 183:

> "It would be a very narrow construction of the constitutional amendment in question and of the decisions based upon it, and a very restricted application of the broad principles upon which both the amendment and the decisions proceed, to hold that, while State and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the State may lawfully do so by contract, which the Courts may enforce. Such a view is, I think, entirely inadmissible. Any result inhibited by the Constitution can no more be accomplished by contract of individual citizens than by legislation, and the court should no more enforce the one than the other . . . But the principle governing the case is, in my opinion, equally applicable here, where it is sought to enforce an agreement made contrary to the public policy of the government, in contravention of one of its treaties, and in violation of a principle embodied in its Constitution. Such a contract is absolutely void, and should not be enforced in any court—certainly not in a court of equity of the United States."

**B. Judicial Enforcement of a restrictive covenant which, solely on the basis of race, forbids a person from purchasing and occupying land for residential purposes, is in violation of Section 1978, Revised Statutes.**

Section 1978, Revised Statutes, 8 U. S. C. Sec. 42, provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

Petitioners are citizens of the United States (R. 380; 169, 238, 215, 226, 307). White citizens admittedly have the right to purchase and hold the property here involved. The injunction which the District Court issued denies that right to the grantee petitioners solely on the basis that they are not "white." The District Court, an arm of the government, has therefore denied to them the "same right . . . as is enjoyed by white citizens" to purchase and hold property. The effect of the injunction is to deny, to others whom the court would hold to be "non-white" citizens, the right which white citizens enjoy to buy and hold other racially restricted property.

This court held in *Buchanan* v. *Warley*, 245 U. S. 60, that enforcement of a municipal ordinance directed toward the same end as this covenant would violate the Civil Rights Act. Judicial enforcement of this covenant violates that Act just as plainly.

**C. Judicial enforcement of a restrictive covenant which, solely on the basis of race, forbids a person from purchasing and occupying land is in violation of a treaty of the United States, namely, the charter of the United Nations to which the United States adheres.**

The Charter of the United Nations provides that "the United Nations shall promote • • • universal respect

for, and observance of, human rights and fundamental freedoms for all without distinction as to race" and that "All Members pledge themselves to take joint and separate action" for that purpose. Articles 55(c), 56 (59 Stat. 1031, 1045-1046). The United States is a party to the charter, which has been ratified by the Senate as a treaty (59 Stat. 1031), under the Treaty power of the Constitution (Article VI) which provides that "all treaties made • • • under the authority of the United States, shall be the supreme law of the land."

One of the most fundamental of human rights and freedoms is the right and freedom to acquire a home and to live in it. The enforcement, by the judicial arm of the Government of the United States, of restrictive covenants which, solely on the basis of race, forbid a person from purchasing and occupying land for residential purposes, is clearly in violation of the requirement that the Government of the United States "shall promote • • • universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race." The supremacy of this Treaty precludes the specific enforcement by any court of a contract which, if enforced, would be contrary to the objectives of the Treaty. *Kennett v. Chambers*, 55 U. S. (14 How.) 38; *In re Drummond Wren*, (1945) 4 Dom. L. R. 674 (Ontario High Court); *Gandolfo v. Hartman*, 49 Fed. 181, 182-3.

## III

**Racial restrictive covenants, and their enforcement by the courts, are so plainly contrary to the public policy of the United States, that the judgments of the court below should be reversed by this Court.**

Racial restrictive covenants, and their enforcement by the courts, are contrary to the public policy of the United States.

*Constitution.* This Court's decision in *Buchanan* v. *Warley*, 245 U. S. 60, that the Constitution forbids legislation restricting the sale and occupancy of land solely on the basis of race obviously indicates that the Constitution reflects a national policy against racial restrictive covenants and against the specific enforcement by a court of private contracts which achieve the very same end.

*Statutes.* Explicit formulation of the national public policy against the racial restrictions here involved is also present in the statutes of the United States. Section 1978, Revised Statutes, 8 U. S. C. Sec. 42 provides: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." Under Section 5508, Revised Statutes, 18 U. S. C., Sec. 51, criminal penalties are provided where ". . . two or more persons conspire to injure, oppress, • • • any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . ." This act has been held to apply to agreements between persons to keep Negroes from the right to lease and cultivate private lands. *United States* v. *Morris*, 125 Fed. 322; see also *United States* v. *Waddell*, 112 U. S. 76; *Ex Parte Yarbrough*, 110 U. S. 651.

*Treaties.* This national policy is further expressed in the treaties of the United States. By adherence to the Charter of the United Nations, the United States pledged itself to "promote • • • universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race." In the treaties with the satellite Axis nations, this country was particularly careful to incorporate guarantees of nondiscrimination against racial minorities. 16 Dept. of State Bulletin No.

1077, 1080, 1081, 1082 (June 1, 1947). And when the Act of Chapultepec was adopted by the United States and the Latin American Nations at the International Conference on Problems of War and Peace, at Mexico City, Mexico, these nations unanimously adopted a resolution on March 6, 1945, that their governments shall "prevent with all the means in their power all that may provoke discrimination among individuals because of racial or religious reasons" (*The New York Times*, p. 9, March 7, 1945).

*President.* On June 29, 1947, the President of the United States stated:[21] "There is no justifiable reason for discrimination because of ancestry, or religion, or race, or color. We must not tolerate such limitations on the freedom of any of our people and on their enjoyment of the basic rights which every citizen in a truly democratic society must possess. Every man should have the right to a decent home • • • We must insure that these rights —on equal terms—are enjoyed by every citizen."

*Effect of Covenants.* Finally, aside from the express formulation of public policy set forth by the Constitution, by statutes, by treaties, and by the President of the United States, the drastic effects of restrictive covenants in accentuating the housing shortage for Negroes and confining them to wretched quarters in overcrowded ghettos, with consequent jeopardy to the health and safety of the community, indicate that such covenants, and their specific enforcement by the judicial arm of the Government, are contrary to the public policy of this country, and should not be countenanced.

*Kennett* v. *Chambers*, 55 U. S. (14 How.) 38;

Gelhorn, *Contracts and Public Policy*, 35 Col. L. Rev. 678, 691-2;

[21] Address of President Truman, 38th Annual Conference of the National Association for the Advancement of Colored People (p. 4, *The Washington Post*, June 30, 1947.)

Williston on Contracts, (Rev. ed., 1937) secs. 1652, 1652A, 1653;

*Gandolfo* v. *Hartman*, 49 Fed. 181;

*In re Drummond Wren* (1945), 4 D. L. R. 674 (Ontario High Court) (restrictive covenant held contrary to public policy, partially in reliance upon the Charter of the United Nations.)

American Law Institute, Restatement of the Law of Contracts, Vol. 2, secs. 512, 591 (1932).

## IV

**Because of the discriminatory character and inequity of agreements restricting the sale, purchase and occupancy of land solely on the basis of race, no court of equity should lend its aid to the specific enforcement of such agreements.**

The covenants here involved discriminate not only against the entire Negro race, but also against other "colored persons." These may include American Indians[22] and Hawaiians, as well as other American citizens of Filipino, Mexican, Chinese, Japanese, Cuban, Spanish, Latin American, Arab and other ancestry. Probably more than 20,000,000 citizens of the United States are thus restricted from the purchase and sale of residential land. The breadth of this discrimination is utterly contrary to the historic genius of this great country. Furthermore, the familiar principle of "balancing equities" precludes any injunction in this case because the extreme hardship which the injunctions would inflict upon the grantee petitioners (R. 227, 228, 260-64, 309-10, 334, 339, 340, 364) greatly outweighs any benefits which the respondents may conceivably derive from them. Courts of equity should with-

[22] Petitioner Hurd, although found by the trial court to be a Negro, claims to be a Mohawk Indian (R. 238).

hold specific enforcement in these circumstances. *Morton Salt Co.* v. *G. S. Suppiger Co.*, 314 U. S. 488, 492; *Beasley* v. *Texas & Pacific Ry. Co.*, 191 U. S. 492, 498.

V.

**Racial restrictive covenants are void as unreasonable restraints on alienation.**

The number of people which these covenants perpetually exclude from the potential market for the sale of the lands here involved, as well as other lands subjected to restrictive covenants, is so great that the covenants must be held invalid as unreasonable restraints upon alienation. No other restraints of an comparable degree of exclusion have ever been upheld,[23] and all reason is against upholding them. In addition, the restraint is unreasonable and void because it is anthropologically impossible to determine who is a "colored person."

VI

**This Court did not, in Corrigan v. Buckley, 271 U. S. 323 (1926), decide the questions which are here urged. Since the decisions of the courts below, as well as the decisions of numerous State courts since 1926 in cases involving racial restrictive covenants, were based on erroneous assumptions concerning the case of Corrigan v. Buckley, this Court should grant writs of certiorari in this case in order that matters of large public concern may be decided on the merits rather than on misapprehensions as to the views of this Court.**

The erroneous impression that this Court has ruled on the questions here urged is based on misinterpretation of

[23] Restraints on alienation of land have been held invalid where only two persons were excluded, *Jenne* v. *Jenne*, 271 Ill. 526, 111 N. E. 540; and only the relatives of the testator and his widow were excluded, *Barnard's* where only the relatives of the testator and his widow were excluded, *Barnard's Lessee* v. *Bailey*, 2 Har. (Del.) 56 (1836).

*Corrigan* v. *Buckley*, 271 U. S. 323. In that case, Corrigan, Buckley and others had executed an agreement that no part of the properties covered would be sold to, or occupied by, Negroes. Later, Corrigan contracted to sell one of the lots to a Negro. A bill was filed in the trial court of the District of Columbia to enforce the covenant. The defendants moved to dismiss on the sole ground that the "covenant is void," because in conflict with the Constitution and the laws of the United States and with public policy. No other issue was presented by the pleadings or the arguments in the lower courts. No question was raised as to the constitutional propriety of judicial enforcement of the covenant. These motions were overruled, the injunction granted, and the Court of Appeals affirmed.

*Corrigan* v. *Buckley* reached this Court on *Appeal*, not on certiorari. Section 250 of the Judicial Code as it then read authorized appeals in six types of cases, including (Third) "cases involving the construction or application of the Constitution of the United States * * *" and (Sixth) "cases in which the construction of any law of the United States is drawn in question by the defendant." Act of March 3, 1911, 36 Stat. 1087, 1159. The defendants based their appeal solely on the contention that the covenant was "void" because it violated the 5th, 13th and 14th Amendments and also the Civil Rights Act (Sections 1977, 1978, 1979, Rev. Stats.).

This Court held: *First*, that the 5th and 14th Amendments dealt only with governmental action, not with actions of private persons; that the 13th Amendment dealt only with involuntary servitude; and therefore that the contention that the *covenant was void* under these Amendments raised no substantial question. 271 U. S. 323, 330. *Secondly*, this Court held that the Civil Rights Act did not prohibit or invalidate contracts entered into between private persons concerning their property, saying: "There is no color for

the contention that [the Civil Rights Act] rendered the indenture void . . . . We therefore conclude that neither the constitutional nor statutory questions relied on as grounds for the appeal to this Court have any substantial quality or color of merit, or afford any jurisdictional basis for the appeal." 271 U. S. 323, 331. *Thirdly*, this Court decided that the contention "that the indenture is void as being 'against public policy,' does not involve a constitutional question within the meaning of the" appeal provisions of the Judicial Code. This Court, therefore, dismissed the appeal for want of jurisdiction and without implying that the appealed judgment was right. In fact, since this Court had no jurisdiction, it could not even consider any question not involved in reaching that conclusion. It is plain, therefore, that this Court decided only (a) that the *creation* by private parties of racial restrictive covenants does not violate the Constitution or the Civil Rights Act, and (b) that the contention that a contract was against public policy was inadequate basis for an *appeal* under the Judicial Code.

No contention that either the Constitution or the Civil Rights Act prohibited *enforcement by injunction* of such covenants was raised by any pleading in any court, or was considered by either the district court or the Court of Appeals. Nevertheless, the appellants undertook, by brief and argument, to raise that question in this Court. This Court said (271 U. S. 323, 331-332):

> "And, while it was further urged in this Court that the *decrees of the courts below in themselves* deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under

paragraph 3 of the Code provision, *it was not raised by the petition for the appeal or by any assignment of error, either in the Court of Appeals or in this Court;* and it likewise is lacking in substance. * * *"

"It results that, in the absence of any substantial constitutional or statutory question giving us jurisdiction of this appeal under the provisions of § 250 of the Judicial Code, *we cannot determine upon the merits the contentions earnestly pressed by the defendants in this court that the indenture is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant.* These are questions involving a consideration of rules not expressed in any constitutional or statutory provisions, but claimed to be a part of the common or general law in force in the District of Columbia; and, plainly, they may not be reviewed under this appeal unless jurisdiction of the case is otherwise acquired.

"Hence, *without a consideration of these questions, the appeal* must be, and is *Dismissed for want of jurisdiction.*" (Emphasis supplied.)

This Court's reference in *Corrigan* v. *Buckley*—"and it likewise is lacking in substance"—to the contention thus raised for the first time (that the decrees themselves were unconstitutional) was only *dictum,* since this Court had ruled that there was no jurisdiction to consider the merits of the case and since that question was not in any event properly in that case.

To deny that the Constitution and the Civil Rights Act made a racial restrictive covenant "void" is quite different from saying that such a covenant is enforceable by Court injunction. This Court recognized the difference in the *Corrigan* case. The Court below, however, refused to recognize this difference and based its holding in this case on prior decisions of that Court which were themselves based on misapprehensions of this Court's decision in *Corrigan*

v. *Buckley*. This Court should, therefore, grant certiorari in this case in order that these matters of large public concern may be adjudicated on their merits, not on misapprehensions as to the views of this Court.

## Conclusion

A basic aim of the United States and the allied nations in World War II was the defeat of the same principle of racism which underlies the racial restrictive covenant in this case. To uphold this racial restrictive covenant would nullify the victories won by the United States and the allied nations at such great cost in that war, and deliberately ignore the tensions and misery which the exaltation of racism has imposed on the entire world.

It is respectfully submitted that the petitions for writs of certiorari be granted.

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